



March 28, 2003

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## ENGROSSED SENATE BILL No. 74

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DIGEST OF SB 74 (Updated March 25, 2003 3:36 PM - DI 103)

**Citations Affected:** IC 24-5; IC 34-30.

**Synopsis:** Deceptive commercial electronic mail. Provides that a person may not initiate or assist in the transmission of a commercial electronic mail message from a computer located in Indiana or to the electronic mail address of an Indiana resident if the message: (1) uses a third party's Internet domain name without permission of the third party; (2) otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of the electronic mail; or (3) contains false or misleading information in the subject line. Requires a person that sends unsolicited commercial electronic mail to place certain information in the subject line of the electronic mail and remove the electronic mail address of a person who requests to be removed from the sender's electronic mail lists. Authorizes an interactive computer service to block the receipt or transmission through its service of such electronic mail. Provides that the recipient of an unsolicited commercial electronic mail or an internet service provider has a right of action against the sender of an electronic mail message that violates the statute but not against an internet service provider and other persons involved in the transmission of the electronic mail message.

**Effective:** July 1, 2003.

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### Ford, Merritt, Antich

(HOUSE SPONSORS — WEINZAPFEL, MURPHY, HASLER)

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January 7, 2003, read first time and referred to Committee on Economic Development and Technology.

February 4, 2003, amended, reported favorably — Do Pass.

February 17, 2003, read second time, amended, ordered engrossed.

February 18, 2003, engrossed. Read third time, passed. Yeas 50, nays 0.

#### HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Technology, Research and Development.

March 27, 2003, amended, reported — Do Pass.

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ES 74—LS 6133/DI 75+



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March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED SENATE BILL No. 74

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A BILL FOR AN ACT to amend the Indiana Code concerning consumer sales.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-5-22 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]:

4 **Chapter 22. Deceptive Commercial Electronic Mail**

5 **Sec. 1. As used in this chapter, "assist the transmission" means**  
6 **to provide substantial assistance or support that enables a person**  
7 **to formulate, compose, send, originate, initiate, or transmit a**  
8 **commercial electronic mail message when the person providing the**  
9 **assistance knows or consciously avoids knowing that the initiator**  
10 **of the commercial electronic mail message is engaged or intends to**  
11 **engage in a practice that violates this chapter.**

12 **Sec. 2. (a) As used in this chapter, "commercial electronic mail**  
13 **message" refers to an electronic mail message sent to promote the**  
14 **sale or lease of real property, goods, or services.**

15 **(b) The term does not include an electronic mail message to**  
16 **which an interactive computer service provider has attached an**  
17 **advertisement in exchange for free use of an electronic mail**

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account, if the sender has agreed to such an arrangement.

Sec. 3. As used in this chapter, "electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

Sec. 4. (a) As used in this chapter, "initiate the transmission" refers to the action by the original sender of an electronic mail message.

(b) The term does not include an action by any intervening interactive computer service that handles or retransmits the message.

Sec. 5. (a) As used in this chapter, "interactive computer service" means an information service, a system, or an access software provider that provides or enables computer access to a computer server by multiple users.

(b) The term includes the following:

(1) A service or system that provides access to the Internet.

(2) A system operated or services offered by a library, a school, a state educational institution (as defined in IC 20-12-0.5-1), or a private college or university.

Sec. 6. As used in this chapter, "Internet domain name" refers to a globally unique hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right most string specifying the top of the hierarchy.

Sec. 7. (a) For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is an Indiana resident if that information is available, upon request, from the registrant of the Internet domain name contained in the recipient's electronic mail address.

(b) Subsection (c) applies only to a commercial electronic mail message that:

(1) uses a third party's Internet domain name without permission of the third party;

(2) otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of the commercial electronic mail message; or

(3) contains false or misleading information in the subject line.

(c) A person may not initiate or assist in the transmission of a commercial electronic mail message described in subsection (b):

(1) from a computer located in Indiana; or

(2) to an electronic mail address that the sender:

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(A) knows; or  
 (B) has reason to know;  
 is held by a resident of Indiana.

**Sec. 8. A person may not do any of the following:**

**(1) Send unsolicited commercial electronic mail and fail to use "ADV:" as the initial four (4) characters in the subject line of the electronic mail. This subdivision does not apply if any of the following apply:**

**(A) The sender of the electronic mail has a current business relationship with the recipient of the electronic mail.**

**(B) The sender of the electronic mail is an organization using the electronic mail to communicate with its members.**

**(C) The sender of the electronic mail is an organization using the electronic mail to communicate exclusively with the organization's employees or contractors, or both.**

**(2) Send unsolicited commercial electronic mail and fail to use "ADV:ADLT" as the first eight (8) characters in the subject line of the electronic mail. This subdivision applies only to unsolicited commercial electronic mail containing a solicitation for:**

**(A) the sale or lease of services or tangible or intangible personal or real property; or**

**(B) an extension of credit;**

**that may be viewed, purchased, leased, or possessed only by an individual who is at least eighteen (18) years of age.**

**(3) Send unsolicited commercial electronic mail and fail to provide a means for the recipient easily and at no cost to the recipient to remove the recipient's name from the sender's electronic mail address lists.**

**(4) Send unsolicited commercial electronic mail to a recipient who has asked the sender to remove the recipient's electronic mail address from the sender's electronic mail address lists.**

**(5) Provide to a third person the electronic mail address of a recipient who has asked the sender to remove the recipient's electronic mail address from the sender's electronic mail address lists. This subdivision applies to a third person who is a part of the sender's business organization. This subdivision does not prohibit providing a recipient's electronic mail address to a third person for the sole purpose of inclusion of the electronic mail address on a do-not-mail list.**

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1       **Sec. 9. (a) An interactive computer service may, upon its own**  
 2       **initiative, block the receipt or transmission through its service of**  
 3       **any commercial electronic mail message that it reasonably believes**  
 4       **is or will be sent in violation of this chapter.**

5       **(b) An interactive computer service is not liable for any action**  
 6       **voluntarily taken in good faith to block the receipt or transmission**  
 7       **through its service of any commercial electronic mail message that**  
 8       **it reasonably believes is or will be sent in violation of this chapter.**

9       **Sec. 10. (a) The following have a right of action against a person**  
 10       **who initiates or assists the transmission of a commercial electronic**  
 11       **mail message that violates this chapter:**

12       **(1) A person who receives the commercial electronic mail**  
 13       **message.**

14       **(2) An interactive computer service that handles or**  
 15       **retransmits the commercial electronic mail message.**

16       **(b) This chapter does not provide a right of action against:**

17       **(1) an interactive computer service;**

18       **(2) a telephone company; or**

19       **(3) a CMRS provider (as defined by IC 36-8-16.5-6);**

20       **whose equipment is used to transport, handle, or retransmit a**  
 21       **commercial electronic mail message that violates this chapter.**

22       **(c) It is a defense to an action under this section if the defendant**  
 23       **shows by a preponderance of the evidence that the violation of this**  
 24       **chapter resulted from a good faith error and occurred**  
 25       **notwithstanding the maintenance of procedures reasonably**  
 26       **adopted to avoid violations of this chapter.**

27       **(d) If the plaintiff prevails in an action filed under this section,**  
 28       **the plaintiff is entitled to the following:**

29       **(1) An injunction to enjoin future violations of this chapter.**

30       **(2) Compensatory damages equal to any actual damage**  
 31       **proven by the plaintiff to have resulted from the initiation of**  
 32       **the commercial electronic mail message. If the plaintiff does**  
 33       **not prove actual damage, the plaintiff is entitled to**  
 34       **presumptive damages of five hundred dollars (\$500) for each**  
 35       **commercial electronic mail message that violates this chapter**  
 36       **and that is sent by the defendant:**

37       **(A) to the plaintiff; or**

38       **(B) through the plaintiff's interactive computer service.**

39       **(3) The plaintiff's reasonable attorney's fees and other**  
 40       **litigation costs reasonably incurred in connection with the**  
 41       **action.**

42       **(e) A person outside Indiana who:**

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1           (1) initiates or assists the transmission of a commercial  
2           electronic mail message that violates this chapter; and  
3           (2) knows or should know that the commercial electronic mail  
4           message will be received in Indiana;  
5           submits to the jurisdiction of Indiana courts for purposes of this  
6           chapter.

7           SECTION 2. IC 34-30-2-96.5 IS ADDED TO THE INDIANA  
8           CODE AS A NEW SECTION TO READ AS FOLLOWS  
9           [EFFECTIVE JULY 1, 2003]: **Sec. 96.5. IC 24-5-22-9 (Concerning**  
10          **the action of an interactive computer service in blocking the receipt**  
11          **or transmission of certain electronic mail messages).**

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SENATE MOTION

Mr. President: I move that Senator Merritt be added as coauthor of Senate Bill 74.

FORD

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SENATE MOTION

Mr. President: I move that Senator Antich be added as coauthor of Senate Bill 74.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 74, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 12, after "9." insert **"(a)"**.

Page 3, line 13, after "by" insert ":

**(A)"**.

Page 3, line 14, after "general" insert ";

**(B) an interactive computer service;"**.

Page 3, line 14, after "or" begin a new line double block indented and insert:

**"(C)"**.

Page 3, line 14, after "mail" insert ";

Page 3, line 15, begin a new line block indented beginning with "under".

Page 3, between lines 16 and 17, begin a new paragraph and insert:

**"(b) The attorney general may adopt rules under IC 4-22-2 to implement this chapter."**

and when so amended that said bill do pass.

(Reference is to SB 74 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 6, Nays 0.

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## SENATE MOTION

Mr. President: I move that Senate Bill 74 be amended to read as follows:

Page 3, delete lines 12 through 20, begin a new paragraph and insert:

**"Sec. 9. (a) A person who violates this chapter commits a deceptive act that is actionable by an interactive computer service or the recipient of the commercial electronic mail.**

**(b) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:**

- (1) An injunction to enjoin future violations of this chapter.**
- (2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage in excess of five hundred dollars (\$500) for each commercially deceptive electronic mail message, then the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each deceptive commercial electronic mail message that violates this chapter and that is sent by the defendant:**
  - (A) to the plaintiff; or**
  - (B) through the plaintiff's interactive computer service.**
- (3) The plaintiff's reasonable attorney's fee and other costs reasonably incurred in connection with the action."**

(Reference is to SB 74 as printed February 5, 2003.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Technology, Research and Development, to which was referred Senate Bill 74, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 24, delete "rightmost" and insert "**right most**".

Page 3, between lines 3 and 4, begin a new paragraph and insert:

**"Sec. 8. A person may not do any of the following:**

**(1) Send unsolicited commercial electronic mail and fail to use "ADV:" as the initial four (4) characters in the subject line of the electronic mail. This subdivision does not apply if any of the following apply:**

**(A) The sender of the electronic mail has a current business relationship with the recipient of the electronic mail.**

**(B) The sender of the electronic mail is an organization using the electronic mail to communicate with its members.**

**(C) The sender of the electronic mail is an organization using the electronic mail to communicate exclusively with the organization's employees or contractors, or both.**

**(2) Send unsolicited commercial electronic mail and fail to use "ADV:ADLT" as the first eight (8) characters in the subject line of the electronic mail. This subdivision applies only to unsolicited commercial electronic mail containing a solicitation for:**

**(A) the sale or lease of services or tangible or intangible personal or real property; or**

**(B) an extension of credit;**

**that may be viewed, purchased, leased, or possessed only by an individual who is at least eighteen (18) years of age.**

**(3) Send unsolicited commercial electronic mail and fail to provide a means for the recipient easily and at no cost to the recipient to remove the recipient's name from the sender's electronic mail address lists.**

**(4) Send unsolicited commercial electronic mail to a recipient who has asked the sender to remove the recipient's electronic mail address from the sender's electronic mail address lists.**

**(5) Provide to a third person the electronic mail address of a recipient who has asked the sender to remove the recipient's electronic mail address from the sender's electronic mail address lists. This subdivision applies to a third person who is**

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a part of the sender's business organization. This subdivision does not prohibit providing a recipient's electronic mail address to a third person for the sole purpose of inclusion of the electronic mail address on a do-not-mail list."

Page 3, line 4, delete "8" and insert "9".

Page 3, delete lines 12 through 30, begin a new paragraph and insert:

**"Sec. 10. (a) The following have a right of action against a person who initiates or assists the transmission of a commercial electronic mail message that violates this chapter:**

**(1) A person who receives the commercial electronic mail message.**

**(2) An interactive computer service that handles or retransmits the commercial electronic mail message.**

**(b) This chapter does not provide a right of action against:**

**(1) an interactive computer service;**

**(2) a telephone company; or**

**(3) a CMRS provider (as defined by IC 36-8-16.5-6);**

**whose equipment is used to transport, handle, or retransmit a commercial electronic mail message that violates this chapter.**

**(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violations of this chapter.**

**(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:**

**(1) An injunction to enjoin future violations of this chapter.**

**(2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:**

**(A) to the plaintiff; or**

**(B) through the plaintiff's interactive computer service.**

**(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.**

**(e) A person outside Indiana who:**

**(1) initiates or assists the transmission of a commercial**

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**electronic mail message that violates this chapter; and  
(2) knows or should know that the commercial electronic mail  
message will be received in Indiana;  
submits to the jurisdiction of Indiana courts for purposes of this  
chapter."**

Page 3, line 33, delete "IC 24-5-22-8" and insert "**IC 24-5-22-9**".  
and when so amended that said bill do pass.

(Reference is to ES 74 as reprinted February 18, 2003.)

HASLER, Chair

Committee Vote: yeas 12, nays 0.

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